

AMENDED IN SENATE AUGUST 18, 2010

AMENDED IN ASSEMBLY APRIL 13, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2770

**Introduced by Assembly Member Monning
(Principal coauthor: Assembly Member Bill Berryhill)**

March 1, 2010

An act to add ~~Section 559 to~~ and repeal Section 559 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2770, as amended, Monning. Employee wages and working hours: violators.

Existing law requires private employers to perform certain activities with regard to employee wages, hours, and working conditions.

This bill would, *until January 1, 2017, establish a pilot program to investigate employment and payment practices within the swimming pool and spa construction industry. The bill would require the Labor Commissioner or his or her designee from the Labor and Workforce Development Agency Employment Development Department, in consultation with the Franchise Tax Board and the Economic and Employment Enforcement Coalition (EEEC), the Department of Justice, the Department of Insurance, the Labor and Workforce Development Agency, and industry representatives, to develop and implement a set of standards criteria that, if met by an employer, would trigger a recommendation for an audit or investigation by appropriate state tax authorities of employers to determine if the employer is in violation of statutes relating to employee wages, hours, and working conditions.*

After July 1, 2011, this bill would require the ~~Labor Commissioner or the EEEC~~ *Employment Development Department* to take specified actions to facilitate audits and investigations of employers who meet the standards required by this bill with respect to an employer when application of the set of criteria indicates that a violation of the statutes described above may have occurred. This bill also would state findings and declarations relating to the underground economy and the swimming pool and spa construction industry.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature finds and declares all of the
 2 following:
- 3 (1) Despite many targeted enforcement efforts in recent years,
 4 including the creation of the Economic and Employment
 5 Enforcement Coalition, and the addition of 62 personnel years by
 6 the Governor in 2005 to specifically address the problem, evidence
 7 indicates that the underground economy in California is flourishing.
- 8 (2) According to the Employment Development Department's
 9 analysis of findings of the Internal Revenue Service, the
 10 underground economy in California is estimated to be between
 11 \$60 billion and \$140 billion each year.
- 12 (3) Employers operating in the underground economy hurt
 13 everyone; the state loses billions of dollars each year in tax
 14 revenues, workers are forced to go without basic employment
 15 protections, and law-abiding businesses are confronted with unfair
 16 competition from scofflaw competitors.
- 17 (4) According to the Franchise Tax Board and the State Board
 18 of Equalization, an average of \$8.5 billion in owed corporate,
 19 personal, and sales and use taxes goes uncollected in California
 20 each year, with unreported and underreported economic activity
 21 responsible for the vast majority of that total.
- 22 (5) As the state faces unprecedented budget shortfalls, rigorous
 23 enforcement of existing state tax laws should be a top priority.
- 24 (6) It is therefore in the public interest to establish a *more*
 25 coordinated approach to enforcement in the underground economy,
 26 which would include a nexus between the state's enforcement of
 27 labor and tax laws.

1 (7) *The construction industry has been particularly hard hit by*
2 *the underground economy, especially the swimming pool and spa*
3 *construction business, thus making it an appropriate industry to*
4 *serve as the subject of a pilot program to develop a more*
5 *coordinated approach to enforcement in the underground economy.*

6 (b) It is the intent of the Legislature in enacting this act to target
7 those employers that operate in the underground economy in
8 flagrant violation of law, and not employers that commit minor or
9 inadvertent violations of existing law.

10 SEC. 2. Section 559 is added to the Labor Code, to read:

11 ~~559. (a) The Labor Commissioner or his or her designee from~~
12 ~~the Labor and Workforce Development Agency, in consultation~~
13 ~~with the Franchise Tax Board and the Economic and Employment~~
14 ~~Enforcement Coalition (EEEEC)~~

15 *559. (a) A pilot program is hereby established to investigate*
16 *employment and payment practices within the swimming pool and*
17 *spa construction industry.*

18 (b) *The Employment Development Department, in consultation*
19 *with the Franchise Tax Board, the Department of Justice, the*
20 *Department of Insurance, the Labor and Workforce Development*
21 *Agency, and industry representatives, shall, by July 1, 2011,*
22 *develop and implement an appropriate set of standards criteria*
23 *that, if met by an employer, will trigger a recommendation for an*
24 *audit or investigation by appropriate state tax authorities of*
25 *employers to determine if the employer is in violation of this*
26 *chapter, Chapter 1 (commencing with Section 200) of Part 1, or*
27 *Chapter 1 (commencing with Section 1171) of Part 4. The set of*
28 *standards criteria shall take into account, among other things, the*
29 *severity and number of violations committed by an employer. all*
30 *relevant factors, including reported workers' compensation*
31 *exemptions and the ratio of building material purchases to reported*
32 *labor costs.*

33 ~~(b)~~

34 (c) ~~After July 1, 2011, the Labor Commissioner or the EEEEC,~~
35 ~~whichever of the two has authority over the investigation through~~
36 ~~which it was discovered that the standards developed in subdivision~~
37 ~~(a) have been met, shall take all of the following actions with~~
38 ~~respect to an employer who has met those standards: *Employment*~~
39 ~~*Development Department shall take the following actions with*~~
40 ~~*respect to an employer when application of the set of criteria*~~

1 *indicates that a violation of the laws specified in subdivision (b)*
2 *may have occurred:*

3 (1) Notify the appropriate state tax authorities ~~each time the set~~
4 ~~of standards is met by an employer.~~

5 (2) Provide the appropriate state tax authorities with the name
6 of the employer and all relevant and necessary information
7 regarding the violations.

8 (3) Make a recommendation to the appropriate state tax
9 authorities that the employer be audited or investigated.

10 (d) *This section shall remain in effect only until January 1, 2017,*
11 *and as of that date is repealed, unless a later enacted statute, that*
12 *is enacted before January 1, 2017, deletes or extends that date.*